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ARTICLE

Introduction

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Abstract

This symposium firmly covers the impacts of human rights law on penal, prison, (police) custodial, immigration, and psychiatric policies in diverse jurisdictions, including Russia, Australia, Japan, Israel, the United States, and Europe, that have been understudied and neglected in comparison with the United States and Europe. It also raises socio-legal debates about accountability, operational complexities, transparency, the ability to either limit or increase the state's right to punish, the efficacy of oversight bodies, the limits of human rights "law" in this context, access to justice and legal aid for detainees and prisoners, and the persistence of violations in the face of reform. In particular, this symposium offers an opportunity to analyze the way in which the United Nations, the European Court of Human Rights, national courts, the monitoring bodies, and detainees are able to challenge penal and detention policies as well as to soften them through the lens of human rights. This symposium intends therefore to demonstrate an engagement with existing scholarship in human rights, penal, detention, immigration and prison policies, and punishment. It relies on theoretical and empirical socio-legal work that addresses these issues from a local, national, and global perspective. It also challenges traditional socio-legal boundaries by taking into account and integrating the intersection of policy and subdiscipline spheres that cover criminal and penal justice, immigration, psychiatric institutions, and human rights. In this way, this symposium combines the study of these socio-legal fields and all places of detention in very contrasting jurisdictions with a view to analyzing the nature of relations between human rights and detention.

Keywords: detention policies; human rights; coercive rights; international monitoring; regional oversight

Introduction

The process of institutional and judicial control over many institutions and sectors is often described as an influential and spreading socio-legal trend that is contributing to the development and the reform of modern societies (Schwartz 2010). This seems

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to be particularly the case for detention such as prisons, police stations and other penal institutions, immigration centers, and psychiatric hospitals as international bodies and the courts have tried to influence detention policies since at least the 1960s. The United Nations (UN) and European judicial and inspectorate bodies that share the general principles and aims of what is now commonly referred to as "global justice" have gained increasing prominence in the fields of detention and penal policy and practice over time, and, particularly in recent years, each of those bodies have been working in their diverse capacities to ensure that human rights legislation is observed and monitored inside the borders of each nation-state. While penal, prison, and immigration policies have always been an exclusive competence and a monopoly exerted by national states, these policies have been progressively controlled, monitored, and influenced by the UN as well as regional organizations such as the Council of Europe and the European Union.

A monitoring of penal and prison policies has been effectively undertaken by the UN through its standards setting, such as the 1955 Minimum Rules for the Treatment of Prisoners,[1] and updated by the 2015 UN Nelson Mandela Rules,[2] which notably address significant questions like independent penal monitoring, health care and mental illness, prison violence, disciplinary sanctions, and solitary confinement. The Mandela Rules, which were drafted by an international assembly of human rights and penal experts under the sponsorship of the government of South Africa led by former long-term prisoners, are applicable to all UN members as soft standards. However, enforcement mechanisms do exist for the states that have ratified the 2002 Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).[3]

In addition to this specific oversight, several UN permanent committees such as the UN Commission on Human Rights have been charged with drafting human rights conventions and monitoring the violations of human rights. The oversight of human rights has been carried out by the Special Rapporteur on Torture, an independent expert collaborating with international and local non-governmental organizations (NGOs), who is also competent for visiting detention facilities and dealing with alleged cases of torture such as disciplinary segregation and solitary confinement. An important change has been the replacement of the UN Commission on Human Rights by the UN Council on Human Rights in 2006, which led to the addition of the universal periodic reviews (UPR) to the commission's oversight apparatus. While only certain countries are monitored by the UN Human Rights Commission, the UPR regularly monitors all the states of the Council of Human Rights. Thus, the reform of the Committee on Human Rights has resulted in a significant increase in the monitoring of human rights for all states, a phenomenon that has been neglected and even overlooked to a certain extent by some scholars specializing in detention and prison studies.

[1] Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva on 30 August 1955, and approved by the Economic and Social Council by its Resolutions 663C (XXIV) of 31 July 1957 and 2076 (LXII), 13 May 1977.

[2] UN Nelson Mandela Rules, UN Doc. A/Res/70/175, 17 December 2015.

[3] Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, December 18, 2002, 2375 UNTS 237 (OPCAT); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984, 1465 UNTS 85 (CAT).

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In addition, the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was adopted on 10 December 1984 by many nations, including the United States and most European states, to set up the UN Committee against Torture (CAT), which would be in charge of monitoring states parties in the execution and implementation of the convention. In particular, this convention established a monitoring procedure that requests all states parties to submit regular reports to the CAT on how they are complying with the convention and how they are enshrining the rights recognized by the convention at the national level. UN monitoring has been enhanced greatly with the creation of the Subcommittee on Prevention of Torture (SPT) by the optional protocol of the CAT, adopted in 2002 and ratified by many states. The SPT's primary remit is to visit places of deprivation of liberty (custodial police detention, prisons, psychiatric hospitals, and immigration detention centers) in the states parties. Consequently, UN monitoring since OPCAT was introduced has fostered and increased independent national monitoring of prisons. The protocol requests member states to set up independent "national preventive mechanisms" (NPMs) for the prevention of torture at the domestic level. These NPMs, which operate under the authority of the UN Committee on Human Rights, are responsible for making regular inspections and visits to places of detention, hearing appeals by prisoners, elaborating recommendations to their national authorities, submitting proposals and observations on existing or draft legislation, and issuing a public annual report for the relevant parliaments. In response to these international obligations, many countries have either established their own ombudsmen or transformed their previsous oversight bodies to make them compliant with OPCAT and to inspect all the places of detention and issue and submit their annual reports on detention conditions to the SPT.

UN monitoring has exerted some influence on regional organizations such as the Council of Europe and the European Union that has seriously influenced the oversight of penal and prison policies (van Zyl Smit and Snacken 2009; van Zyl Smit 2010). The main mission of the Council of Europe, which consists of implementing the European Convention on Human Rights and mainting cohesion between its organs, has significantly influenced the scope and content of European policies since its creation in 1949 (Bond 2011; Schumacher 2012, 187). In the penal and detention sector, this influence has massively deepened and broadened over the last decade, resulting from the interaction between, and the mutual reinforcement of, three distinct organs that have gained new powers and competences: the European Court of Human Rights (ECtHR), the Committee for the Prevention of Torture, and the Committee of Ministers. Using procedural obligations and expanding its power and control over national governments over time, the ECtHR has followed since 2009 a judicial policy that is resolutely aimed at driving national governments to adopt new penal policies oriented toward alternatives to prison sentences and taking stock of, and remedying, the failures of their penitentiary systems—most specifically, in terms of prison overcrowding, inhumane and degrading conditions of detention, lack of medical care, and the absence of effective and efficient domestic legal remedies.

In particular, through pilot and quasi-pilot judgments and other landmark judgments that require monitoring of their execution under Article 46 of the European Convention on Human Rights (ECHR) (through submission of action plans and reports detailing remedial actions to the Committee of Ministers by member

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states found guilty of breaches of human rights law), the Strasbourg Court aims at answering the structural and systemic issues encountered in certain Council of Europe member states by ordering them to implement alternatives to detention and effective redress mechanisms (Cliquennois, Snacken, and van Zyl Smit 2021).[4] This monitoring and supervision have been principally made through the lens of human rights with a view to putting an end to gross violations of prisoners' rights committed by national states (van Zyl Smit and Snacken 2009). This influence is such that the analysis of penal and prison policies needs therefore to integrate the study of this UN and regional level at least. In this regard, upholding the rule of law, ensuring accountability for decisions made by penal and administrative bodies, and protecting fundamental rights are crucial aspects of democracy and constitutional regimes (Aizpurua and Rogan 2021; O'Connell and Rogan 2022).

These foundational principles of public law are significant in the field of "penality," which has been described as "the network of laws, processes, discourses, representations and institutions which make up the penal realm" (Garland 1990, 17) and as contributing to the expansion of the carceral (Phelps 2016; Young and Petersilia 2016) and shadow carceral states (Murakawa and Beckett 2024). They have been particularly effective in the detention environment, where the potential for abuse has been well documented (Zimring and Hawkins 1995; Zimring 2001; Rhodes 2004; Western 2006; Simon 2007; Haney 2008; Lynch 2009; Rubin 2017; Eason et al. 2018)—notably, in terms of the infringement of dignity and inhumane and degrading treatments (Simon 2011, 2014; Snacken 2021), where the legitimacy of authority can be fragile, and where detainees are considered to belong to marginalized and vulnerable groups that are weakly aware of their rights (Beckett and Western 2001; Wacquant 2001, 2009). Custodial institutions are indeed a very specific context where constitutional and human rights are interpreted, and the meaning and effects of public law in them require particular attention and scrutiny. In this regard, international human rights frameworks underline the importance of accountability, including inspection, monitoring, and complaints mechanisms for protecting human rights and the rule of law and could act as a shield against penality and carceral abuses.

On the other hand, some scholars have investigated the sharpening of penality through, and in the name of, human rights. This process is applied through what has been called "coercive human rights" by the literature on human rights. Christine van den Wyngaert (2006) was the first scholar to show how human rights play a significant role in penality in both neutralizing as a "shield" (the defensive role of human rights) and in triggering as a "sword" (the offensive role of human rights) the application of criminal law. While lenient rights as shield rights act against penalization and the excess of criminal law by prohibiting any breach of the right to dignity and inhumane and degrading treatment and by requiring procedural guarantees related to the right of the incarcerated persons (Tulkens and van de Kerchove 2005), van den Wyngaert's analysis was followed by several legal studies that investigated more specifically the sword dimension of coercive rights in the criminal system, particularly in Europe (Cartuyvels et al. 2007; Tulkens 2011). The reliance on criminal law to protect human rights has been dubbed the "criminal turn in human rights law and advocacy" (Engle 2015, 1119), coercive human rights

[4] Convention for the Protection of Human Rights and Fundamental Freedoms 1950, 213 UNTS 222.

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(Lavrysen and Mavronicola 2020; Pinto 2023), human rights penality (Tapia Tapia 2023; Mavronicola 2024), and even the criminalizing of human rights (Alston 2023).

This literature has shown the systematization of this process through "the coercive human rights doctrine," which obliges the member states to mobilize their criminal apparatus to protect against, and provide redress for, serious breaches of human rights, including in detention (Lavrysen and Mavronicola 2020; Mavronicola 2024) and, more particularly, in the case of prisoners' homicide and suicide (Cliquennois, Snacken, and van Zyl Smit 2022). In other words, coercive rights tend to penalize human behavior that contravenes human rights through criminal laws. This use of the criminal law to protect human rights thus constitutes an additional form of coercive human rights (Engle 2015; Mavronicola 2020) and even contributes to the penalization process (Engle, Miller, and Davis 2016). In this regard, by the mid-twentieth century and into the twenty-first, the sheer number of human rights treaties and international conventions constituted prolific sources of punishments carried out by states that were obliged to prosecute and punish breaches of human rights (Lavrysen and Mavronicola 2020; Malby 2020; Pinto 2020).

In addition, through a wide interpretation of conventions and treaties, human rights bodies charged with controlling their national implementation and compliance have formulated positive obligations on the burden of states to criminalize, prosecute, and punish gross human rights violations (Cartuyvels et al. 2007; Lazarus 2012, 2013; Huneeus 2013; Engle 2015; Pinto 2018, 2020; Goold and Lazarus 2019; Lavrysen and Mavronicola 2020; Malby 2020). Such kinds of obligations have proliferated over time—particularly, under the influence played by the ECtHR notably through the doctrine of the convention as a living instrument (Lavrysen and Mavronicola 2020). This phenomenon is indeed visible and vivid in the jurisprudence of the Strasbourg Court, which has extensively interpreted the ECHR as giving rise to positive obligations on the state to criminalize, police, prosecute, and punish significant human rights violations (Lavrysen and Mavronicola 2020; Pinto 2020). In this regard, the act of calling upon human rights by the ECtHR to use coercive and carceral tools is widespread. Both security and protection are often expressed in terms of human rights, identifying landmark human rights norms and standards as requiring the adoption of coercive measures (Tesón 2005; Lazarus 2015).

While scholars have pointed out the factors determining the impediments and efficacy of international human rights rules and norms (Blau and Moncada 2007; Savelsberg 2010, 2015), poor attention has been also paid by this literature to the study of human rights violations relating to custodial, prison, immigration, and psychiatric detention. In this regard, a lack of intersection of policy spheres covering criminal and penal justice, immigration, mental illness, and human rights may be acknowledged and should be filled. In this regard, psychiatric institutions have indeed long been part of this penal realm as offenders presenting mental disorders can in many countries be held either in prisons or in (forensic) psychiatric institutions (Traub et al. 2020), and individual transfers between those institutions are very common (Lara-Millán 2021), especially from psychiatric hospitals to prisons (Steadman et al. 1984; Harcourt 2008, 2011) and conversely from prisons to psychiatric hospitals (Lara-Millán 2021). Similar movement can be observed between prisons and immigration detention centers with the studies on "bordered penality" (Aas and Bosworth 2013; Franko 2019; Bosworth and Vannier 2020) and

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"crimmigration" (Stumpf 2006; Aas and Bosworth 2013) showing how migrants are penalized and incarcerated (Ryo 2024).

Moreover, while academic attention has recently been paid to the impressive rise of the legal framework of human rights in the realm of penal, detention, and prison policies (Feeley and Rubin 1998; van Zyl Smit and Snacken 2009; Simon 2014; Daems and Robert 2017; Cliquennois and Snacken 2018; Cliquennois, Snacken, and van Zyl Smit 2021), some significant issues have been neglected by the literature up to date. First, human rights conventions, their monitoring, and their violations need to extend beyond documenting legal and policy issues in the American and European context. Second, this literature has overlooked some important countries such as Australia, Japan, Israel, and Russia that are characterized by high rates of incarceration. In particular, Eastern countries such as Russia have been under-researched (Piacentini and Katz 2016), while they are targeted by pilot judgments rendered by the ECtHR and by specific monitoring from the Council of Europe (prior to the Russian withdrawal from the Council of Europe) and the UN concerning detention and prison overcrowding, inhumane detention and prison conditions, and the lack of health care and real and effective domestic remedies. Third, scholars have notably ignored fundamental issues such as the efficacy and inefficacy of monitoring and judicial bodies charged with human rights violations, accountability, and transparency of institutions dealing with detention. While American scholarship literature has focused on the bad impacts (Gottschalk 2006; Schoenfeld 2010, 2018; Guetzkov and Schoon 2015; Eason 2016) and, more rarely, on the positive outcomes (Boyland and Mocan 2014) of prison litigation on prison overcrowding (Feeley and Van Swearingen 2004), the ability of human rights law to limit and soften penal policies and the state's right to punish have been overlooked. Access to justice for detainees and prisoners (notably, through NGOs) in this context has also been under-researched (Cliquennois 2025). Fourth and last, the literature has neglected, as pointed above, the issue of detention as a whole covering not only prisons but also immigration centers, police stations, and psychiatric hospitals.

This is why this symposium firmly covers the impacts of human rights law on penal, prison, (police) custodial, immigration, and psychiatric policies in diverse jurisdictions, including Russia, Australia, Japan, Israel, the United States, and Europe (with a specific focus on Belgium), that have been understudied and neglected in comparison with the United States and Europe. It also raises socio-legal debates about accountability, operational complexities, transparency, the ability to either limit or increase the state's right to punish, the efficacy of oversight bodies, the limits of human rights "law" in this context, access to justice and legal aid for detainees and prisoners, and the persistence of violations in the face of reform. In particular, this symposium offers an opportunity to analyze the way in which the UN, the ECtHR, national courts, the monitoring bodies and detainees (notably, through NGOs) are able to challenge penal and detention policies and to soften them through the lens of human rights. This symposium intends therefore to demonstrate an engagement with existing scholarship in human rights, penal, detention, immigration and prison policies, and punishment. It relies on theoretical and empirical socio-legal work that addresses these issues from a local, national, and global perspective. This special issue also challenges traditional socio-legal boundaries by taking into account and integrating the intersection of policy and subdiscipline spheres that cover criminal

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and penal justice, immigration, psychiatric institutions, and human rights. In this way, this symposium combines the study of these socio-legal fields and all places of detention (police stations, prisons, juvenile facilities, immigration centers, and psychiatric hospitals) in very contrasting jurisdictions with a view to analyzing the nature of relations between human rights and detention.

A decade ago, Jonathan Simon (2014) argued that American prisons were on the precipice of a transformation away from mass incarceration, stimulated by a great legitimacy crisis and a dignity cascade in response. But, despite a period of historically low crime (before the COVID-19 pandemic), legal defeats for prisons, and growing political support for change, mass incarceration in the United States has proven stubbornly resilient, and evidence of improving prison conditions remains scarce (even before the pandemic swept through incarcerated populations in the first wave). Even in the face of a pandemic that was proving especially fast moving and lethal for congregate populations, including the imprisoned and people in nursing homes, states have been reluctant to undertake widespread releases (as has been done in other countries). What makes mass imprisonment so hard to shrink or even reform for the better? Sociologists have long suggested that organizations in modern bureaucratic society, even in its most capitalist sectors, rely heavily on their ability to use symbolic structures, rituals, and ceremonies to align themselves with dominant rational myths in their environment.

In this regard, in his article "Dignity Defied: Punitive Myths and the Surplus Legitimacy of the Carceral State," Simon shows that the resilience of prisons and other institutions of the carceral state (for example, the police) reflects their ability to "regenerate" their legitimacy in real time by drawing on multiple sources of cultural belief. Specifically, Simon stresses that the history of criminal justice in the United States has institutionalized five "rational myths" about punishment that have become so deeply embedded in our legal and political culture as to remain mostly beyond debate: (1) the myth of sovereignty—that punishment strengthens the legal order by "repaying" the convicted person's debt to society; (2) the myth of discipline—that punishment reforms the "offender" of "idle habits" that lead to crime; (3) the myth of criminology (and eugenics)—that punishment removes the "dangerous few" from society; (4) the myth of counterinsurgency—that punishment keeps "safe neighborhoods" from becoming overtaken with crime and violence; (5) the myth of white supremacy—that public safety requires an overwhelming physical power over non-White subjects, especially Black and Indigenous people, and that punishment as a social system is necessary to maintaining it. According to Simon, these myths are transnational, the product of the extension of European legalities to all parts of the globe through colonization and the modern international economic order, but there are reasons to believe that the United States has absorbed more of them and more virulent versions. After offering an overview of these myths, Simon's article considers how they can be deployed to help the carceral state recover from a crisis of legitimacy. Using a case study of California since its prison system was declared "uncivilized" by the US Supreme Court in 2011 and ordered to dramatically reduce its overcrowding, Simon suggests a two-step process.

In the same way, while explanations for the failure to protect and care for incarcerated people in recent years in the United States focus on the decrease in legal accountability, lack of adequate external oversight, or underlying culture, very little

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scholarship empirically examines how prisoners' rights accountability mechanisms work (or do not work) together. In their article entitled "Patchwork Protection: The Politics of Prisoners' Rights Accountability in the United States," Heather Schoenfeld, Kimberley Rhoten, and Michael Campbell introduce an accountability framework that helps examine the whole prisoners' rights "accountability environment" in the United States. Situating the prisoners' rights accountability environment within recent theories of the penal state, they provide an empirical account of two prison accountability environments in practice and the failure to protect incarcerated women from sexual assault in two different states—at the level of the relationships between actors/organizations—over a twenty-year period.

Their finding is that the prisoners' rights accountability environment constitutes a mix of legal, bureaucratic, professional, and political systems. Such a patchwork accountability environment consists of a web of hierarchical and interdependent relationships that constrain or enable accountability. In this regard, the case study comparison demonstrates the primacy of political ideology, partisan politics, and political power in prisoners' rights accountability environments. Schoenfeld, Rhoten, and Campbell show that, ultimately, the effectiveness of prisoners' rights accountability environments depends on whether protecting prisoners' rights is adequate with the priorities of dominant political officials. They argue that the misalignment between legal expectations and political ideology and interests explains the current failure to protect people incarcerated in US prisons. Their findings and argument have significant implications for efforts to improve accountability and incarcerated people's well-being.

In particular, the crucial need to protect the rights of children and young people (a specific vulnerable population) in detention has also been the subject of a recent global study by the UN (Nowak 2019) and has been highlighted by national and international controversies. In this regard, the article entitled "Protecting Rights of Children and Young People in Detention in Australia: Evaluating Credibility and Effectiveness of Human Rights Monitoring Bodies" by Bronwyn Naylor examines the role of external monitoring in preventing the ill-treatment of children and young people in detention. Australia has until recently shown limited interest in protecting the rights of people in detention or recognizing international critique of its practices, but, in 2017, it finally took the step of ratifying the OPCAT.[5] Naylor examines the process in which Australia is now engaged, of ensuring the effective monitoring of the rights of people in detention, focusing on the protection of the rights of children and young people in criminal justice detention. As a federal state, Australia faces the task of establishing a comprehensive network of monitoring bodies, constituting the OPCAT's NPMs, across nine jurisdictions and with a range of existing and varied monitoring bodies. Naylor's article highlights the importance of the "monitoring of monitoring" to ensure the fair treatment of children and young people in correctional detention. This is why Naylor identifies significant factors relevant to the effectiveness and credibility of child-centered monitoring processes and analyzes the opportunities for maximizing both in the Australian context and globally.

In the former Soviet Union, varying incarceration rates and the social and cultural legacies of the gulag's continent-sized system of punishment have not been

[5] OPCAT.

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systematically studied. Yet the post-Soviet region presents a number of puzzles that touch on our wider understanding of penal policy, cultures of punishment, and societal attitudes. Laura Piacentini analyzes these puzzles in her article. In particular, how do we explain change in prison rates and conditions across the post-Soviet region? How can we understand why, since the year 2000 and against all predictions, many prison populations across the former Soviet Union have gone into decline? What political and economic factors might explain this? What is the influence of the Council of Europe and the ECtHR? How did policy makers in Russia go about constructing a penal policy influenced by human rights and what shaped their preferences? What might it tell us about the driving factors (such as human rights) that can explain decarceration in other contexts?

To examine these questions that have been ignored by the literature, Piacentini's article utilizes mixed methodologies including a social survey, interviews with policy makers, documentary analysis, and desk-based statistical analysis. Piacentini develops a new theoretical framework that offers a multidisciplinary approach (history, criminology, sociology, and political science) to better understand Russian penal development since the collapse of the Soviet Union in 1991. This article elaborates a multilayered narrative or discourse made up of a set of processes and norms that have managed the practical challenges facing the biggest penal system in the twentieth century. The new theoretical framework aims to locate a significant time of penal change in diverse, and disputative, external compliance building and bureaucratic regimes in an authoritarian state. Piacentini argues that, due to transnational regulation dominating post-Soviet imprisonment, the penal system operates in a state of constant institutional risk and regulation. This transnational milieu is one where apparent and even superficial compliant strategies have created new sociological contexts for thinking critically about penal reform. Those contexts concern the extent to which European institutions and legal and powerful NGO regulation have produced and embedded compliance regimes that have the effect (intended or otherwise) of erasing discourse on the role of the prison in state-society relations. In response, the Russian authoritarian state, led by Vladimir Putin, has interpreted on its own and in a bureaucratic style the standards of the Council of Europe and the condemnations pronounced by the ECtHR.

The account of the relationship and tensions between punishment and human rights is also existent and even dominant in Israel over recent decades and is characterized by a high degree of volatility, which suggests that it is difficult and even hard to predict future developments. While the Israeli penal and detention policies that need to be adopted to improve the balance and implement international human rights norms are clear, and, indeed, have been laid out beginning with adherence to the various options available under the UN conventions and the provisions of the Mandela Rules, the manner in which Amendment no. 42 to Israel's Prison Ordinance was adopted seems to reflect an overriding reluctance to waive the current wide discretion of the prison authorities. Ironically, however, Leslie Sebba and Rachela Er'el show in their article "Imprisonment and Human Rights in Israel: Uncertainty and Volatility" that most of the transitions and reforms that have taken place, beginning with the constitutional transformations of the 1990s and including the three recent reforms described, were themselves quite unpredictable, and so future developments remain uncertain. It seems that the initiative for instigating these

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reforms may be the result of outside pressures or may paradoxically derive from the institutions involved themselves without such pressure. While Israel's constitutional and human rights-oriented reforms seem to indicate improvement and a certain level of compliance, Israel has also experienced a series of harsh and regressive statutory and penological reforms that could be interpreted to a certain extent as a kind of backlash and resistance to an international monitoring.

In a quite similar manner but focusing on Japan, Bunji Sawanobori interrogates the discretionary power of the prison administration through the disciplinary measures and solitary confinement provided for in the Act on Penal Detention Facilities and the Treatment of Inmates and Detainees of 2005 and argues that this reform has – in effect – provided a legal foundation for a prison warden to use disciplinary segregation as frequently as he wishes. His article discusses conditions in Japanese prisons, focusing on those aspects that remain unchanged despite the spread of modern international human rights norms in the twentieth century. Japan enacted new prisons legislation in 2005–6 following the Nagoya Prison Scandal of 2002–3—the 2005 Act on Penal Detention. While there are six different kinds of disciplinary measures provided for under this new legislation, solitary confinement is by far the most frequently applied when Japanese prisoners breach prison rules and regulations. This situation is unchanged from that under the previous legislation, the 1908 Prison Act, which endured practically unchanged for nearly a century.

Sawanobori argues that, whereas the legal revisions appear to have been carried out, the discretionary power of prison wardens remains unrestrained, and prison officers retain decision-making power for disciplinary measures. The article then critiques this Japanese approach on two grounds: (1) that liberalizing wardens' use of disciplinary segregation runs directly counter to what is known regarding harms to prisoners from this mode of punishment and (2) that it violates both the spirit and the provisions of the non-binding Mandela Rules. This global standard is based on the idea of "human dignity" and establishes the principle that segregation should be the most infrequently used disciplinary measure, imposed only as a last resort. The article ends with practical suggestions on ways of pressurizing Japan to make a more serious move forward to protect the human rights of prisoners. One is to use more efficiently the periodic reports that Japan must produce as a duty under the International Covenant on Civil and Political Rights and the CAT.[6] The UN Human Rights Committee, in response to the reports, recommends practical measures to improve the situation or demands further reports on the situation. They should include criticism on solitary UN Nations Congress on Crime Prevention and Criminal Justice, which was held in Japan in April 2020 and offered an occasion to reassert the importance of compliance of disciplinary segregation with the UN norms.

While scholars have pointed out the factors determining the impediments and efficacy of international human rights rules and norms, poor attention has been paid by this literature to the study of human rights violations relating to transfers between prison and psychiatric detention. This is why Gaëtan Cliquennois and Sonja Snacken's article aims at challenging traditional socio-legal boundaries by taking into account and integrating the intersection of policy and subdiscipline spheres that cover criminal and penal justice, psychiatric institutions, and human rights. In this way,

[6] International Covenant on Civil and Political Rights, 1966, 999 UNTS 171; CAT.

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their article aims to combine the study of these socio-legal fields and different places of detention (especially prisons and psychiatric hospitals) with a view to analyzing more generally the nature of relations between human rights and detention. Raising the question of the ability of human rights to limit the state's power to punish in Europe therefore compels Cliquennois and Snacken to probe into those institutions and policies. They show that such "total institutions," which host persons who are perceived for different reasons as "deviant" being deprived of their liberty, present many similarities (police detention, prisons, psychiatric institutions, and immigration detention centers), including the risk of ill-treatment and other human rights violations. Cliquennois and Snacken also show enhanced forms of "transinstitutionalization", especially between prisons and psychiatric institutions with some detainees moving from one institution to another on a more or less regular basis. They wonder whether such trans-institutionalization leads to different degrees of human rights protection, and they forge the concept of "trans-policies" to take into account the mutual influence and the domino effects of such detention policies that are paradoxically and at the same time acknowledged, encouraged (through active promotion of common human rights standards), and fought by European human rights institutions through legal strategic policies. In their empirical section, they focus on the increasing interactions between prison and mental health policies, taking Belgium as an example, as it is known to present complex and paradoxical interactions between prison and mental health policies and to raise specific human rights challenges in this area.

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